

Questions And Answers About: Probate

Probate is the procedure for transferring title of a deceased person's property to the proper survivors. If the person did not have a will, the laws of intestate succession set out who will inherit. If there is a valid will, the estate still must be probated, but it is distributed according to the will. Probate also arranges for payment of all debts and taxes.

There are misconceptions about the expense of probate and the benefits of avoiding it. People sometimes try to avoid probate using life estates, living trusts, or other techniques which can be more costly than probate. Others deed their property over to their children, creating unforeseen problems including the risk of losing the property during their lifetime or having the deed declared invalid after their death. Sometimes surviving spouses do not probate an estate until they want to sell property and find out they can't sell until title is in their name only.

To avoid paying tax is one reason people try to avoid probate. It is a common misconception that all property that is probated is also subject to estate tax. In fact, most estates today are distributed free of any inheritance tax, but they still must be probated. For instance, in 2008, up to \$2 million of property can be passed by you on your death without any estate tax. (In 2009, estates worth \$3.5 millions or less can be passed on without having to pay any estate taxes.) Avoiding probate avoids no taxes; the government will take their share regardless of your probate actions. In fact, probate can sometimes reduce the tax that will be owed. **NOTE:** Tax laws are frequently revised, so consult a lawyer if you have a tax question.

Additionally, avoiding probate won't necessarily avoid fights between heirs or beneficiaries. The best way to avoid disputes among your heirs is to discuss your wishes with your family members now.

Expensive court procedures are not required for all estates. Probate under Idaho law is more flexible and quick than before, making it also less expensive. Court involvement is not always necessary at every stage. In addition, there are new devices that require little or no court involvement. For example, you may be able to do these procedures yourself with the use of forms:

- A recorded community property agreement between spouses will automatically transfer title of community property to the survivor when one spouse dies. (**Caution:** This should never be done unless specifically recommended by a lawyer who has examined the facts of your situation.)
- A surviving spouse who is the sole beneficiary may file a petition with the probate court and, after a hearing, take title to all of the decedent's property. The spouse must also assume all debts.
- For estates of less than \$100,000, personal property and title documents may be collected from other people by simple affidavit. Affidavits may also be used to collect debts owed to the deceased person.

The personal representative or surviving spouse is free to reach any kind of attorney fee arrangement (although it may be reviewed by the court on petition), and should ask the attorney about fees beforehand. Attorneys sometimes charge a flat fee for relatively simple estates. For complicated probates, attorneys usually charge an hourly rate. If an attorney quotes a "percentage" fee, you should consult another attorney for a cost comparison. Percentage fees are usually much more expensive than services performed at an hourly rate, even if that rate is \$150 or more.

The time it takes to complete probate depends upon which procedure is being used. If a personal representative is not required, probate might be finished in less than six weeks. Otherwise, it could take from four to six months before all claims are settled and the property is distributed. If a probate takes over six months, you should ask your attorney for a detailed written explanation of why the procedure is not yet finished. Even in these longer proceedings, property can be sold with clear title within three to four weeks from the commencement of the proceeding.

To simplify probate for your survivors, you should have a well-drafted will making clear disposition of your property and naming a competent, trustworthy personal representative. You should also maintain careful records of your debts and assets, including deeds and documentation of bank accounts, certificates, insurance policies, stocks, and bonds. Keep your papers together in an accessible, safe place.